

Your contact :
Roederer
Céline Gogniat Schmidlin
cschmidlin@roederer.fr



ENVIRONMENTAL LIABILITY IN FRANCE

In France, as abroad, your activity, whatever its nature, can generate environmental risks, that's to say risks toward human and natural environment.

Your liability may thus be incurred and controlling the risks relating to this liability regime is essential to ensure the legal security of your business.

In France, the legal and regulatory context was strengthened a few years ago, in particular through Environmental Liability and Ecological Damage. These two regimes are aimed at an attack on the environment, i.e. natural elements, soil, water, protected natural areas.

In addition to these schemes, there is also a liability scheme for damage caused to third parties (= those caused to humans) : an activity other than yours or damage to someone other than you.

It is therefore necessary to understand what these three liability plans cover and how it's possible to cover them through one or more insurance contracts.

1- Environmental damage caused to third parties and their insurance coverages

When your activity is likely to be the cause of pollution that would cause in your neighbourhood (private individuals, professional or leisure activities, etc.) property damage (damage to a neighbour's property), bodily (such as a neighbour's hospital costs) and / or immaterial (such as additional costs caused by the need to supply drinking water by another means), it is necessary to analyse the need to take out an "environmental civil liability" guarantee.

- The scope concerned

All firms are likely to take out such a guarantee if they can cause this type of damage.

It will be necessary to distinguish the different types of pollution likely to occur: "accidental" pollution, that is to say that which manifests itself without delay between pollution and the accident and "gradual" pollution, that is to say those that manifest themselves gradually between pollution and the accident.

- The insurance coverages to consider

Accidental pollution can be covered through a "general civil liability" contract that covers your activities for all material, immaterial or personal damage that you may cause to a third party.

Depending on their potential impacts on the environment, some activities may fall under an administrative classification system "ICPE" (Facilities Classified for Environmental Protection). This regime leads most insurers to exclude from the benefit of this type of contract establishments presenting serious risks to the environment (those subject to "Registration" or "Authorization") and makes it necessary to find an alternative solution through a specific insurance contract.

In addition, gradual pollution can only be covered through specific contracts, namely "environmental civil liability".

2- Environmental damage caused to the Environment and their insurance coverages

- Environmental liability

Established by a European Directive 2004/35 of April 21st 2004 on the prevention and compensation of environmental damage, it was introduced into French law by a law of August 1st 2008 and so introduced the articles L160-1 to L165-2 of the Environmental Code.

Its legal definition

This liability regime is aimed to repair serious damage to the environment or preventing the imminent threat of such damage.

These include direct and indirect measurable environmental damage that :

- create a risk of serious damage to human health due to soil contamination (for example: pollution of agricultural soils, irrigation water, spreading of contaminated sewage sludge ... which can adversely affect crops and therefore pose a great risk to food security)
- seriously affect the state of water (example: a fire in a factory leads to a large discharge of polluted extinguishing waters into a stream causing the death of fish species and the destruction of surrounding flora)
- seriously affect protected species and natural housings (example: spilled hydrocarbons reaching a nature reserve)
- affect the functions performed by soils, waters and species and habitats for the benefit of one of these natural resources or for the benefit of the public (example: fishing is prohibited, harvests are impossible ... following serious damage to the environment).

It is the competent administrative authority, namely the Prefect, who may seek the responsibility of the operator who would have caused such a threat or such damage to the Environment.

Repairable damages consist of repair in kind and not financial, that is to say :

- in the event of imminent threats of damage, the operator may have to take preventive measures without delay to prevent pollution or reduce its effects,

- in the event of damage, he has to take all measures to stop pollution or reduce its effects, such as the remediation of a groundwater table or the reintroduction of a damaged species.

The limitation period for this liability action is 30 years from the event giving rise to the damage.

⇒ Improve your insurance coverage

This type of liability can be covered by means of an own contract "environmental civil liability". It is not included in the general civil liability contract.

- Ecological damage

It was established by a law of August 8, 2016 and is provided for in articles 1246 to 1252 of the Civil Code. It is therefore specific to French law.

⇒ Its legal definition

This is a significant damage to the elements or functions of ecosystems, or to the collective benefits that humans derive from the environment.

Any person with standing and interest in acting as the State, local authorities, associations, etc. can apply for compensation for ecological damage.

It may be a repair in kind requested from the operator of the activity or of financial nature.

Its limitation period is 10 years from the day on which the holder of the action knew or should have known about the manifestation of the ecological damage.

⇒ Improve your insurance coverage

Here again, it is a specific contract "environmental civil liability" that can cover this type of damage.

General civil liability does not provide for this type of repair.

Our advice to determine if your activity is concerned by a necessary coverage of environmental risks

If your activity is

- near an establishment receiving public - such as a hospital, a nursery, shops ;
- near a field, a water collection structure,
- near a river, a pond, a lake, a groundwater table, the coastline,
- near a national park, a natural area (field, forest), a Natura 2000 zone,
- assumes the manufacture, handling, transportation of products likely to spread,
- gives off smoke, a substance,
- has an oil tank,
- is subject to the system of classified installations,
- involves the manufacture, use, release, packaging, transport of chemical or phytosanitary products,
- water treatment on your site

It's time to check if you are well covered and send us your questions, requests for quotes or requests for additional information to our contacts below!